IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5210 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAGAR AGRO CHEMICALS A PARTNERSHIP FIRM THROUGH ITS
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Misc.Application No. 5210 of 2000
MR YOGESH S LAKHANI for Petitioners No. 1-6
MR VIPUL PANCHOLI, APP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/01/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Y.S. Lakhani for the petitioners and ld. APP Mr. Pancholi for the State. Original complainant who has taken sample of insecticide is also present in the Court and on instructions, ld. APP has taken me through the relevant papers and stand

taken by the original complainant.

2. The petitioners have prayed to quash the criminal complaint No. 928/92 pending in the court of learned Chief Judicial Magistrate, Junagadh. Complaint was filed against the petitioners for the offences punishable under Section 29(1) of Insecticides Act, 1968 (hereinafter referred to as the "Act"). It is submitted by ld. counsel Mr. Lakhani that on more than one occasion and on two different stages of trial, the petitioners have tried to get the order of discharge in reference to the facts available on record, case put forward by the prosecution and the relevant legal provisions. But in view of the resistance put by the original complainant, the ld. Chief Judicial Magistrate has ultimately decided to proceed with the prosecution against the present petitioners and, therefore, they are obliged to file present application under Section 482 of CrPC for quashing the aforesaid criminal complaint.

3. It is not a matter of dispute that the discharge application and request to drop the proceedings made under Section 258 of CrPC has been dismissed by the ld. Chief Judicial Magistrate vide order dated 29.6.2000. This Court can say that the order passed by the ld. Chief Judicial Magistrate cannot be said to be a reasoned order. However, this Court is not sitting in appeal or not exercising revisional jurisdiction and, therefore, I would not like to pass other comments on the merits of the order passed by ld. Chief Judicial Magistrate rejecting the application for discharge.

4. In the instant case, it has been submitted by ld. counsel Mr. Lakhani for the petitioners that if two major legal issues are considered in the context of undisputed facts available on record, the prosecution against the petitioners is not sustainable and, therefore, the same should be turned down. The present petitioners do not say that they were not responsible for keeping or selling questioned insecticide, but it is contended that even if the report of Insecticide Analyst is accepted as true or correct, even then the prosecution against the present petitioners is not sustainable. The certain facts are brought to the notice of this Court and it would be proper to state the same in brief :-

(i) Insecticide known as "Sungor -30- E.C." was taken in the packed container by way of sample by the Insecticide Inspector on 22.8.1991.

(ii) The date of manufacture of Insecticide is January, 1991.

(iii) The sample was sent for analysis on 26.8.1991.

(iv) On 5.9.1991, report of Insecticide Analyst was prepared and it was found that the active substance Dimethoate was 26.02% at the place of 30% as mentioned on the sample. (emphasis supplied).

(v) As the percentage was not found as per the percentage printed over it, the sample was declared as misbranded.

(vi) complainant filed Criminal Complaint on 17.2.1992 and the accused were served with summons.

(vii) On service of summons and after appearing before the Court, the accused requested on the first day to send sample to Central Insecticide Laboratory vide application exh.7 on 30.3.1992.

(viii) On 5.4.1993, i.e. after more than one year, ld. Chief Judicial Magistrate allowed the application and directed the complainant to tender the sample in the Court so that same can be sent for analysis to the Central Laboratory. Accused was also directed that they shall have to pay the costs for such re-testing.

(ix) Shelf life of the sample was to expire in the month of November 1992. So, on the day on which the Court allowed the application exh.7, shelf life of the sample had already expired.

5. It has been pointed out from facts that the Insecticide Inspector had also taken sample of same insecticide of the very same batch i.e. Batch No. SC-5 from the trader of Rajkot in the month of June, 1991 and it was sent for analysis at Gandhinagar and as per the report of Analyst dated 31.8.1991, Dimethoate was found 30.58% against 30% printed on the container. Thus the sample taken from Rajkot, sent for analysis was found "confirmed". In other words, the same was not declared misbranded.

6. I have carefully considered the relevant scheme of the Act reflecting in Sections 3(k), 29, 24(1) and 24(3) & (4) of the Act. Ld. counsel Mr. Lakhani for the petitioners has rightly placed reliance on the decision of the Apex Court in the case of State of Haryana v/s Unique Farmaid P.Ltd., reported in 1994(4) Recent Criminal Reports (Criminal) 540 (SC), wherein the Apex Court through Hon'ble Mr. Justice Wadhwa has held that if the sample of Insecticide found to be misbranded by Insecticides Analyst, it is the privilege of the

accused to send the second sample to Central Laboratory. If such a request to send the second sample to Central Laboratory is made to the authorities, then the same should be analysed by the Analyst before the shelf life expires. In the case before the Apex Court, accused were summoned by the Court when shelf life of the sample had expired. In the case on hand, the accused were summoned much prior to the date of expiry of shelf life of the sample and they had also requested to send the second sample to the Central Laboratory. Petitioners' application was not heard and decided well in time and I am told that on technical ground of non-payment of costs, complainant Inspector had not even cared to tender the sample before the Court. I have gone through the order passed by the ld. Chief Judicial Magistrate. Petitioners were never asked to pay specific amount by way of costs in advance nor payment of costs was as a condition precedent. Irrespective of this part of fact situation, the order of the ld. Chief Judicial Magistrate is of the date after the expiry day of shelf life of the sample. In short, the petitioners can legitimately say that they are deprived of their valuable right to get second sample re-tested by the Central Laboratory. The Apex Court, accepting the contentions of the accused, quashed the proceedings by upholding the findings recorded by Punjab & Haryana High Court. It is not necessary for this Court to quote relevant paras 10 & 12, but it would be proper to say that the reasons given and ratio propounded in the aforesaid decision squarely applies to the facts of the present case.

7. In the same way, decision of the Punjab & Haryana High Court in the case of M/s Solar Syndicate, Dungri v/s State of Punjab, reported in 1994(1) Recent Criminal Reports (Criminal) 140, also helps the present petitioners because sample of Insecticide of the same batch seized from the other two persons but same was found to be according to specifications and, therefore, the Court held that report in the instant case can be said to be defective and hence accused needs acquittal. Of course, this view was taken at the conclusion of trial, but the present petitioners can still submit that in view of legal proposition, they should not be asked to continue with criminal prosecution. It is rightly submitted that such exercise would be in futility. It is not a matter of dispute that very insecticide taken from other shop and sent to very Laboratory for analysis has not been declared misbranded. Scope of error by Analyst who examined the sample in the instant case, cannot be ignored because samples are manufactured in the same

batch. The prosecution cannot be continued for the sake of continuing in view of facts and circumstances as above and in view of settled legal position. Ld. Chief Judicial Magistrate ought to have accepted the pleas advanced by petitioners after careful perusal of record and settled legal position.

8. For the reasons aforesaid, application is allowed. Criminal Complaint No. 928/1992 pending before the ld. Chief Judicial Magistrate, Junagadh is hereby quashed and set aside. Rule is made absolute accordingly.

30.1.2002 [C.K. BUCH, J]

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